

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NORTHSHORE SHEET METAL,
INC.,

Plaintiff,

v.

SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION,
LOCAL 66,

Defendant.

Case No. 2:15-cv-01349 MJP

**DECLARATION OF
CHRISTOPHER L. HILGENFELD IN
SUPPORT OF PLAINTIFF'S MOTION TO
QUASH OR MODIFY SUBPOENAS
DUCES TECUM**

Noted on Motion Calendar: January 8, 2016

I, CHRISTOPHER L. HILGENFELD, declare as follows:

1. I am over the age of eighteen (18) years and I am competent to testify if called upon to do so.

2. I am an attorney at Davis Grimm Payne & Marra, counsel of record for Plaintiff Northshore Sheet Metal, Inc. ("Northshore" or "Defendant"), admitted to practice in the U.S. District Court, Western District of Washington. I am the lead attorney

1 representing Northshore Sheet Metal, Inc. in the above-captioned matter, and I make this
2 declaration based upon my personal knowledge and review of the files and records herein.

3 3. The Parties on October 26, 2015 participated in the 26(f) conference. During
4 this conference I informed Defendant's counsel, Dan Hutzenbiler, that a protective order
5 would be needed in this case. Defense counsel did not mention an intent to immediately
6 serve a subpoena.

7 4. On October 27, 2015, before the parties could discuss the scope of a
8 protective order, Defendant's counsel without any notification to Plaintiff served subpoenas
9 duces tecum upon GLY Construction, Mortenson, and Lease Crutcher Lewis ("General
10 Contractors").

11 5. On December 1, 2015, I received an objection to the subpoena from GLY
12 Construction. I was not aware a subpoena had been served on anyone in this litigation. On
13 the same day, I informed Margaret Burnham, Defendant's attorney, that the subpoenas were
14 defective. I also requested immediate rescission of any subpoenas issued, and a complete
15 list of individuals or entities she had served with subpoenas.
16

17 6. On December 3, 2015, Ms. Burnham provided me a copy of one email to
18 Mortenson Construction, in which she stated the Union's previously issued subpoena was
19 void due to an "inadvertent clerical error." Attached hereto as **Exhibit 1** is an email string
20 containing this information. In that email, she returned the documents to Mortenson
21 Construction. Defendant's counsel did not provide any notification or information regarding
22 withdrawal of any other Union subpoenas.
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1 7. Also on December 3, 2015, Ms. Burnham provided copies of new subpoenas
2 duces tecum she intended to serve. Ms. Burnham stated that she intended to serve the
3 subpoenas on the following day.

4 8. On December 3, 2015, I requested a brief delay in serving those subpoenas. I
5 identified the concern that the information sought included confidential, business proprietary
6 and pricing information. **Exhibit 1.** Northshore sought a brief delay in the service of the
7 subpoenas to permit the parties an opportunity to enter into a protective order. The Union
8 refused to even briefly delay the service of the subpoenas.

9 9. On December 22, 2015 I conferred with Dan Hutzenbiler regarding the
10 subpoenas, along with the protective order. I informed Mr. Hutzenbiler that a two-tier
11 system was proposed in this case due to a fear of dissemination, especially with bid pricing.
12 Mr. Hutzenbiler agreed to a one-tier protective order, but objected to the Plaintiff's two-tier
13 proposal. I also asked Mr. Hutzenbiler if the Union would withdraw the subpoenas and
14 what was the purpose for the information sought. Mr. Hutzenbiler indicated that the
15 information sought was needed for a damages assessment, and the Union would not
16 withdraw its subpoenas.
17

18 10. Attached hereto as **Exhibit 2** is a true and correct copy of the Subpoena
19 Duces Tecum issued on behalf of Defendant and served upon GLY Construction on
20 December 4, 2015.

21 11. Attached hereto as **Exhibit 3** is a true and correct copy of the Subpoena
22 Duces Tecum issued on behalf of Defendant and served upon Mortenson Construction, Inc.,
23 on December 4, 2015.
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1 12. Attached hereto as **Exhibit 4** is a true and correct copy of the Subpoena
2 Duces Tecum issued on behalf of Defendant and served upon Lease Crutcher Lewis on
3 December 4, 2015.

4 13. Attached hereto as **Exhibit 5** is Northshore's proposed protective order.

5 14. Attached hereto as **Exhibit 6** is a red-lined version of Northshore's protective
6 order reflecting changes to the Western District Washington's Model Protective Order.

7 I declare under penalty of perjury under the laws of the State of Washington and the
8 United States that the foregoing statements are true and accurate.

9 Dated at Seattle, Washington this 31 day of DECEMBER, 2015.

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12 Christopher L. Hilgenfeld